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SHORT TREATISE

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ON THE LAW OF

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BILLS OF EXCHANGE,

CASH BILLS,

AND

PROMISSORY NOTES.

BY JOHN BAYLEY,

STUDENT OF GREY'S INN.

LONDON:

PRINTED FOR E. BROOKE, IN BELL-YARD,
TEMPLE-BAR.

M.DCC.LXXXIX.



P R E F A C E.

THE many modern determinations upon the Law of Bills and Notes, and the importance of an intimate acquaintance with the principles of those determinations, is a sufficient apology for an attempt to collect and methodize them. In the following attempt, what are commonly stiled Bills of Exchange, Cash Bills and Promissory Notes, are considered together ; for a cash bill is as much a bill of exchange as any inland bill, and a note after a transfer is in legal operation a complete bill, and must therefore have, when first made, the same essential qualities with bills.

King's Bench Walks,
4th Feb. 1789.



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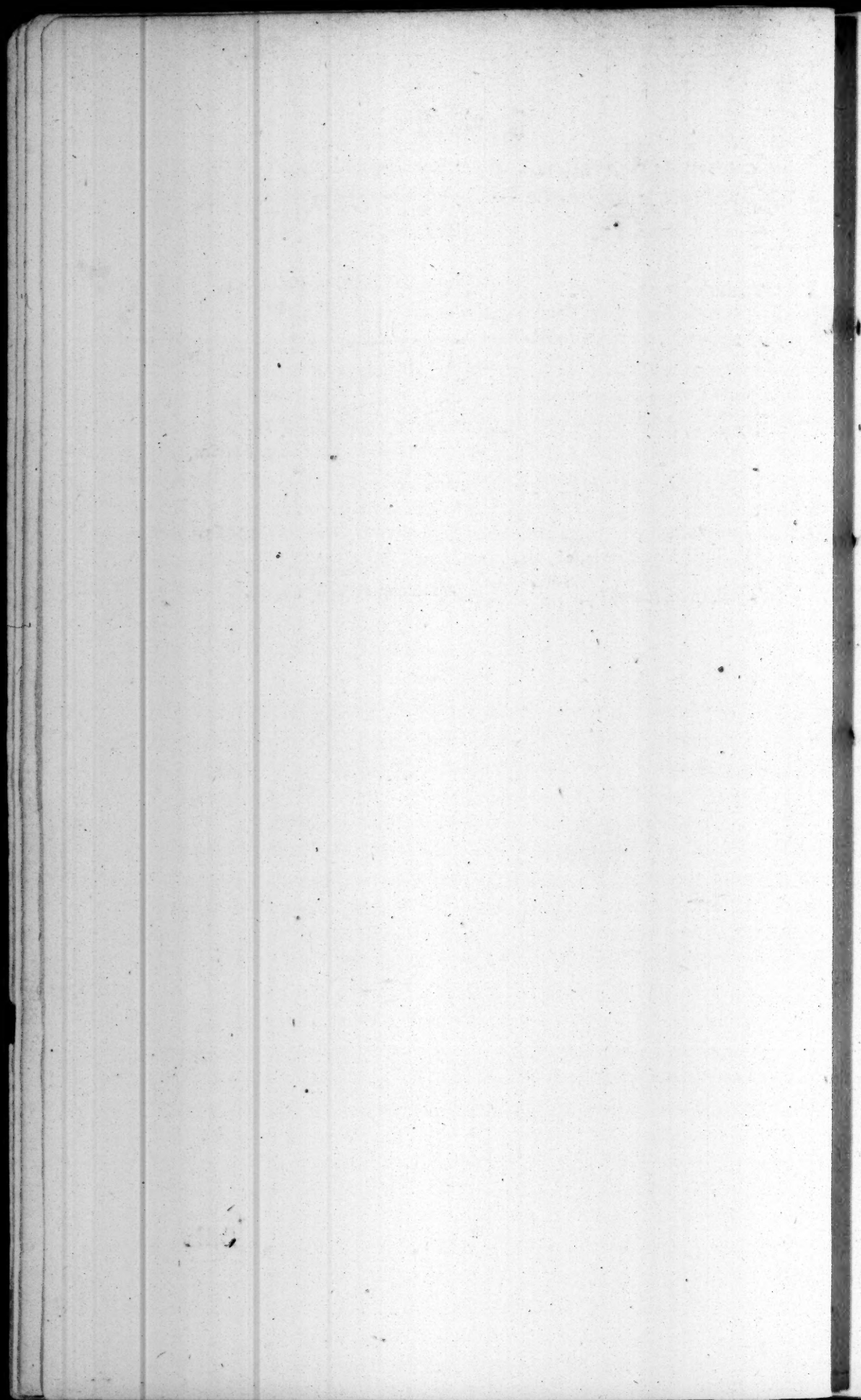
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Bills of Exchange and Promissory Notes.

C A P. I.

Of the Nature of and making Bills and Notes.

A Bill of Exchange is a written order or request, and a Promissory Note a written promise, for the payment of money; the peculiar privileges of which are, that they are always *prima facie* (*a*) presumed to have been made upon a sufficient consideration, and may be negotiated.

For these privileges, bills are indebted to the law and custom of merchants; notes, to the statute of the 3d and 4th Ann. c. 9.

Whether it is essential that a bill or note should be negotiable is unsettled, the (*b*) authorities are contradictory.

To make a bill or note negotiable, it must (*c*) be payable to order, or (*d*) bearer.

(*a*) *R. Peckham v. Wood*, B. R. E. 18 Geo. 3. Vide Appendix, N^o 1. Adm. Blackst. 445.

(*b*) Vide 1 Mod. Ent. 313. Ann. 288. Str. 1211. 2 Willf. 353. 3 Willf. 212.

(*c*) *D. Salk.* 133. Mar. 35.

(*d*) Vide *Hinton v. —* 1 Show. 235. *Shelden v Hently*, 2 Show. 160. *Grant v. Vaughan*, Burr. 1516. Blackst. 485.

A bill or note payable to I. S. or order, is payable to order; a bill or note payable to I. S. or bearer, to the bearer: and in the latter case I. S. is a mere cypher.

A bill or note payable to the order of I. S. is, (a) if I. S. make no order thereon, payable to I. S.

The person who makes a bill is called the drawer, the person to whom it is addressed the drawee, and the person in whose favour it is made the payee.

The person who makes a note is called the maker, the person to whom it is payable the payee.

Bills and notes must be for the payment of money only; an order or promise to pay money and do some other act is no bill or (b) note.

And they must be for the payment of money in specie: an order, &c. or promise to pay money in (c) good East India bonds, is no bill or note.

On negotiable bills and notes made within this kingdom, the money payable must amount to at least (d) twenty shillings, and (e) unless under certain regulations five pounds, otherwise they will,

(a) R. v. Ormiston, 10 Med. 286. Frederick v. Cotton, 2 Show. 8. Anon. Comb. 401.

(b) R. Martin v. Chauntry, Str. 1271.

(c) Bull. Ni. Pr. Ed. 1775. 272.

(d) 15 G. 3. c. 51. s. 1. made perpetual by 27 G. 3. c. 16.

(e) 17 G. 3. c. 30. s. 1. made perpetual by 27 G. 3. c. 16.

be void, and (*a*) the person issuing or negotiating them liable to a penalty not exceeding twenty pounds, nor less than five.

These (*b*) regulations are, that they specify the name and place of abode of the person to whom or to whose order they are made payable, that they be attested by one subscribing witness, that they bear date at or before the time when they are issued, and be made payable within twenty-one days after the date.

The payment of the money mentioned in a bill or note must be certain: but a moral certainty in this respect is sufficient, and (*c*) an uncertainty in the time when such payment is to be made immaterial.

Thus an order, &c. or promise to pay money (*d*) provided the terms mentioned in certain letters shall be complied with, provided (*e*) I. S. shall not be surrendered to prison within a limited time, provided (*f*) I. S. shall not pay the money by a particular day, provided (*g*) I. S. shall leave

(*a*) 15 G. 3. c. 51. s. 2. 17 G. 3. c. 30. s. 2. made perpetual by 27 Geo. 3. c. 16.

(*b*) 17 G. 3. c. 30. s. 1. made perpetual by 27 G. 3. c. 16.

(*c*) R. Cooke v. Colehan, Str. 1217.

(*d*) R. Kingston v. Long, B. R. M. 25 G. 3. Vide Appendix, N^o 2.

(*e*) R. Smith v. Boheme, 3 Ld. Raym. 67. cit. Ld. Raym. 1362, 1396.

(*f*) R. Appleby v. Biddulph, cit. 8 Mod. 363. 4 Vin. 240. Pl. 16.

(*g*) R. Roberts v. Peake, Burr. 323.

me sufficient for the purpose, or I shall otherwise be able to pay it, or (*a*) when I. S. shall marry, is no bill or note, on account of the contingency to which the payment is subjected; an order, &c. or promise to pay out (*b*) of my growing subsistence, or (*c*) fifth payment when due, is no bill or note, because of the uncertainty of its becoming due, nor is an order or promise to pay out (*d*) of money when received, or the (*e*) produce of a consignment when disposed of, in respect of the chance whether (*f*) the one will be received or the other disposed of, and whether in the latter case the produce will be sufficient for the purpose.

So an order, &c. to pay a sum out of (*g*) rents, or (*b*) other money in the hands of the person to whom it is addressed, is no bill, because it is payable out of a particular fund, though a similar order, &c. by the person in whose hands the rent or money lies is.

(*a*) *R. Beardfley v. Baldwin*, Str. 1151. See also *Pearson v. Garrett*, Comb. 227. 4 Mod. 242.

(*b*) *R. Jocelin v. Laferre*, Fort. 281. 10 Mod. 294, 310.

(*c*) *R. Haydock v. Lynch*, Ld. Raym. 1563.

(*d*) *R. Dawkes v. Ld. Deloraine*, Blackst. 782. 3 Will. 207.

(*e*) *Semb. Maber v. Massias*, Blackst. 1072.

(*f*) In Will. 262. is a report from hearsay of a determination that a promise to pay a sum of money on the receipt of the payee's wages due from a ship in government service was a good note; but this seems to militate against the principle established by the cases above alluded to.

(*g*) *D. Ld. Raym.* 1362. Str. 592. Fort. 282.

(*b*) *R. Jenney v. Harle*, Ld. Raym. 1361. 3 Mod. 265. Str. 591.

So an order, &c. from (a) the owner of a ship to the freighter to pay money *on account of freight*, is no bill, because the quantum due for freight may be open to litigation, though such an order (b) from the freighter to any other person is.

An order, &c. or promise to pay money when (c) I. S. shall come of age, specifying the day when that event is to happen, is a good bill or note, because it is payable though he die in the interim.

So an order, &c. to pay money *as (d) the drawer's quarter's half pay by advance* before the pay will be due, is a good bill, because payable though the half pay shall never become due.

The payment of money (e) due from government is an event sufficiently certain upon which to make a bill or note payable.

No particular (f) words are necessary to make a

(a) *R. Banbury v. Liffett*, Str. 1211.

(b) *R. Pierson v. Dunlop*, Cowp. 571.

(c) *R. Goss v. Nelson*, Burr. 226.

(d) *R. Macleod v. Snee*, Ld. Raym. 1481. Str. 762. 1 Barnard. 12.

(e) *R. Andrews v. Franklin*, Str. 24. *Evans v. Underwood*, 1 Willf. 262.

(f) D. 10 Mod. 287. Ld. Raym. 1397. Str. 629. 1 Willf. 263. Vide *Chadwick v. Allen*, Str. 706. It has been thought essential that a bill or note should import to have been made for value received. Vide *Banbury v. Liffett*, Str. 1211. *Pierce v. Wheatley*, 4 Vin. 241. Pl. 20.; but that it need not is now fully settled. *White v. Ledwick*, B. R. H. 25 G. 3. Vide Appendix, N^o 3. *Macleod v. Snee*, Ld. Raym. 1481. See also Fort. 282. 8 Mod. 267. 1 Barnard, 88. Lutw. 889, 1 Mod. Ent. 310. 1 Show. 497.

bill or note; any order, &c. or promise which cannot be complied with or performed without the payment of money, is a bill or note.

Thus an order, &c. or promise to (a) deliver, or that (b) I. S. shall receive money, or to be (c) accountable or (d) responsible for it to I. S. or order, is a bill or note.

The (e) name of the person making it must be inserted in the body, or subscribed at the bottom of every bill or note; and every bill or note must be written, or otherwise signed, by the person making it, or some one authorized by him for that purpose.

If a bill or note made (f) within this kingdom be written on paper, parchment, or vellum, such paper, &c. must, (g) except in a few instances, be, before the bill or note is written, stamped; otherwise the party issuing it will be (b) liable to a penalty of

(a) D. Ld. Raym. 1397.

(b) D. 8 Mod. 364.

(c) R. Morris v. Lee, Str. 629. Ld. Raym. 1396. 8 Mod. 362.

(d) D. 8 Mod. 364.

(e) Vide Str. 399. Ld. Raym. 1376. 1542. 8 Mod. 307.

(f) The 23 G. 3. c. 49. imposes the stamp duty on the paper, &c. whereon *any* foreign or inland bill shall be written, but from the 12th sect. of that statute, which directs that the duty shall be paid by the giver of the bill, from the 14th sect. which provides that the paper, &c. shall be stamped before the writing of the bill, and from 24 G. 3. sess. 1. c. 7. f. 1. which imposes a penalty on any person writing or signing a bill on unstamped paper, &c. it is sufficiently clear the legislature did not mean it to extend to bills drawn abroad.

(g) 23 G. 3. c. 49. f. 2.

(b) 24 G. 3. sess. 1. c. 7. f. 1.

five pounds, and the bill or note will not be (*a*) available, so long as it continues unstamped, in law or equity.

Bills or notes need not be stamped which are either, 1st, (*b*) issued by the Bank of England; 2dly, (*c*) for the payment of less than forty shillings; or, lastly, (*d*) (in the case of bills) drawn upon a banker or person acting as such residing or transacting the business of a banker within ten miles of the drawers place of abode and payable to the bearer on demand.

On other bills or notes, the proper stamp for such as are for the payment of ten pounds on (*e*) demand, is a (*f*) threepenny one; for such others as are either for the payment of (*g*) less than fifty pounds, or (*h*) payable abroad, and for the (*i*) duplicates and triplicates of the latter, a fixpenny one; and for (*k*) such as are for the payment of fifty pounds or upwards *here*, a shilling one.

The paper, &c. on which any of these bills or notes are written, though not stamped ere it is issued, may (*l*) be stamped at any time afterwards,

(*a*) 23 Geo. 3. c. 49. f. 14. (*b*) 23 G. 3. c. 49. f. 9.

(*c*) 24 G. 3. sess. 1. c. 7. f. 4.

(*d*) 23 G. 3. c. 49. f. 4. 24 G. 3. sess. 1. c. 7. f. 3.

(*e*) A bill at sight is not to be considered as a bill payable on demand, *R. Janfon v. Thomas*, B. R. T. 24 G. 3. Vide Appendix, No 4.

(*f*) 23 G. 3. c. 49. f. 6. (*g*) 23 G. 3. c. 49. f. 2.

(*h*) 23 G. 3. c. 49. f. 2. 8. (*i*) 23 G. 3. c. 49. f. 8.

(*k*) 23 G. 3. c. 49. f. 2. (*l*) 24 G. 3. sess. 1. c. 7. f. 8.

on payment of ten pounds, and the bills or notes will from thence operate by relation as good bills or notes *ab initio*.

Bills and notes consist of either one or several parts.

Bills made and payable within this kingdom, (which are called inland bills) and notes, seldom consist of more than one : bills made or payable abroad (which are called foreign ones) in general consist of several.

The several parts of a bill are called a Set.

Each part contains a condition that it shall be payable only so long as all the others remain unpaid : in other respects, all are of the same tenor.

This condition must be inserted in each part, and in each mention every other part of the set : for if a man with an intention to make a set of three parts should omit the condition in the first, and make the second with a condition mentioning the first only, and the third alone with a condition taking notice of the other two, (which, by the way, is the mode pointed out by (a) Molloy, (b) Malynes, and (c) Marius) he may in some cases be obliged to pay each.

But an omission is not, it should seem, of any consequence, which must upon the face of the condition have arisen necessarily from a mistake, as

(a) Book ii. c. 10. f. 14.

(b) Book 3. c. 5. p. 261, 262.

(c) P. 7.

if in the progressive enumeration of the several parts one of the intermediate ones be omitted, as in this instance, "Pay this my first of exchange, second and fourth not paid."

Where a bill consists of several parts, each must be delivered to the person in whose favour it is made, otherwise he will not be able to negotiate it, nor in all cases to enforce payment.

No bill or note can (*a*) properly be made by, nor (*b*) can a bill be properly addressed to, any corporation which has not special power given it for the purposes (which in this kingdom is I believe the case with the Bank of England only); nor (*c*) by or to any natural person incapable of making himself responsible for its payment.

An (*d*) infant cannot make himself responsible for its payment; nor, unless in those instances in which she is considered as having an existence independent of her husband, a feme covert.

A feme covert is considered as having an independent existence where (*e*) she is by particular

(*a*) Vide 3 and 4 Ann. c. 9. s. 3.

(*b*) Vide 5 W. and M. c. 20. s. 28.

(*c*) It has been held that no person except an actual merchant could draw a bill. Vide *Fairley v. Roch*, Lutw. 891. *Bromwich v. Lloyd*, Lutw. 1585. But the contrary is now fully settled. Vide *Sarsfield v. Witherly*, Carth. 82. 2 Vent. 292. Comb. 152. 1 Show. 125. also Lutw. 1585. 12 Mod. 36. 380. Salk. 125.

(*d*) Vide *Williams v. Harrison*, Carth. 160. 3 Salk. 197.

(*e*) Vide *Lacie v. Phillips*, Burr. 1776.

custom permitted to trade on her separate account, where (a) she lives apart from her husband, and has a separate maintenance, or where (b) her husband is under a civil disability of being in the kingdom in which she resides.

A bill (c) may be addressed to the drawee: but in legal operation it is rather a (d) note than a bill.

A bill or note also cannot be made payable to any corporation which cannot negotiate it (which is, I believe, in this kingdom, the case with the Bank only) nor to any natural person who is not capable of suing for its payment.

A feme covert cannot sue for the payment of a bill or note; an infant can.

Upon a bill or note importing on the face of it to be payable to a person not *in esse*, and to require his indorsement on a transfer, issued (as it must be) with an indorsement importing to have been made by him thereon, the person in whose favour such

(a) Vide *Ringstead v. Lady Lanesborough*, B. R. H. 23 G. 3. cit. 1 Term Rep. 6. *Barwell v. Brookes*, B. R. H. 24 G. 3. cit. 1 Term Rep. 6. *Corbet v. Poelnitz*, 1 Term Rep. 5. *Todd v. Stoakes*, Salk. 116.

(b) Vide *Derry v. Dutchess of Mazarine*, Lord Raym. 147. Salk. 116. Blackst. 1081, 1082. *Sparrow v. Carruthers*, Blackst. 1197. 1 Term Rep. 6. 1 Term Rep. 9.

(c) Vide Mar. 3. Fort. 282. *Dehers v. Harriott*, 1 Show. 163. *Starke v. Cheefeman*, Carth. 509. *Robinson v. Bland*, Burr. 1077.

(d) Burr. 673.

indorsement is made, may, it (*a*) should seem, be considered as the payee.

A bill may (*b*) be made payable to the drawer.

The act of drawing a bill implies (*c*) an undertaking from the drawer to the payee and every other person to whom the bill may afterwards be transferred, that the drawee is a person capable of making himself responsible for the bill's payment that he is to be found (if his description be mentioned in the bill) at the place of which he is so described, that he shall (*d*) if applied to for the purpose express in writing upon the bill an undertaking to pay it when it shall become according to its tenor payable, and that he shall then pay it; and subjects him on a failure in any of these particulars to an action at the suit of the payee or such other person.

The making of a note is an express engagement to the payee or person to whom it shall be transferred, to pay the money mentioned therein according to its tenor.

(*a*) This seems the legal operation of such a bill or note; but whether it really is so, is not settled—the point is now depending.

(*b*) *R. Butler v. Cripps*, Salk. 130. v. *Ormsion*, 10 Mod. 286.

(*c*) Vide Salk. 128. Carth. 510. Ld. Raym. 538. Ann. 2. 2 Show. 495. Burr. 1528.

(*d*) *R. Bright v. Parrier*, Bull. Ni. Pr. Ed. 1775. 269. *Milford v. Mayor*, Dougl. 55.

Bills of Exchange *and* Promissory Notes.

C A P. II.

Of the Transfer of Bills and Notes.

BILLS and Notes are transferred either by delivery only, or by indorsement and delivery.

Bills and notes payable to the bearer are transferable by the former mode only; bills and notes payable to order, only by the latter; and bills and notes originally payable to order, and indorsed (as they may) so as to be payable to the bearer, by either.

On a transfer by delivery, the person making it ceases (*a*) to be a party to the bill or note: on a transfer by indorsement, he is to all intents and purposes a new (*b*) drawer.

The person making an indorsement is called the Indorser; the person in whose favour it is made (if his name be mentioned therein) the Indorsee.

(*a*) Vide Ld. Raym. 744. 929, 930. 12 Mod. 241. 408. 517. 521. Salk. 128. 3 Salk. 68. Com. 57.

(*b*) Vide 2 Show. 501. Comb. 32. Skinn. 255, 256. 343. 411. 3 Mod. 87. 12 Mod. 36. Ld. Raym. 181. 444. 744. Salk. 125. 132, 133. 3 Salk. 68. Str. 442. 479. 1 Atk. 282. 2 Atk. 182. Burr. 670. 675. Dougl. 613.

The name of the indorser must appear upon an indorsement, and it must be written or otherwise signed by him, or some person authorized by him for that purpose.¹

Upon bills and notes for the payment of less than five pounds, the indorsement must (*a*) be attested by one subscribing witness.

No particular (*b*) words are essential to an indorsement; the mere signature (*c*) of the indorser is in general sufficient.

But the indorsement of a bill or note for the payment of less than five pounds, must (*d*) mention the name and place of abode of the indorsee, and bear date at or before the time of making it.

An indorsement which mentions the name of the person in whose favour it is made, is called a full indorsement; an indorsement which does not, a blank one.

A blank indorsement makes a bill or note payable to the (*e*) bearer.

A full indorsement either restrains the negotiability of the bill or note, or does not restrain it.

An indorsement is restrictive, which either has

(*a*) 17 G. 3. c. 30. f. 1. made perpetual by 27 G. 3. c. 16.

(*b*) Vide Holt 117. Ld. Raym. 176. 810.

(*c*) Vide 12 Mod. 244. 192. Salk. 126. 130. 128. Lord Raym. 444.

(*d*) 17 G. 3. c. 30. f. 1. made perpetual by 27 G. 3. c. 16.

(*e*) R. Peacock v. Rhodes. Dougl. 611. D. Doug. 617.

express words making it so, or is made in favour of a person who cannot make a transfer.

Thus an indorsement in these words, (*a*) "Pay the contents to *I. S.* only;" "to (*b*) *I. S.* for my use;" or (at least when addressed to the drawee) (*c*) "the within must be credited to *I. S.*" is restrictive; as is also an indorsement to an infant.

But the (*d*) mere omission of words to give a power of transfer, will not make an indorsement restrictive.

A restrictive indorsement precludes the person in whose favour it is made from making a transfer so as to give a right of action against either the person making it, or any of the antecedent parties, and, if the restriction be express, from retaining a payment to their prejudice.

Thus (*e*) where a bill after an indorsement with an express restriction to the drawee, was negotiated by his clerk, and paid upon the drawee's failure for the drawer's honour, the drawer recovered back the money.

An (*f*) indorsement cannot be made for the

(*a*) D. arg. Blackst. 296.

(*b*) D. Blackst. 299. Burr. 1227.

(*c*) R. Ancher v. Bank of England, Dougl. 615.

(*d*) R. More v. Manning, Com. 311. Edie v. East India Company, Blackst. 295. Burr. 1216. D. Str. 557. Vide Bull. Ni. Pr. Ed. 1775. 275.

(*e*) Ancher v. Bank of England, Dougl. 615. P. C.

(*f*) R. Hawkins v. Gardner, 12 Mod. 213. Ld. Raym. 360. Carth. 466. Semb. Anon. 3 Salk. 70. D. acc. 2 Will. 262.

transfer of less than the full sum mentioned in the bill or note.

A transfer by indorsement can only be (*a*) made by him who has a right to make a transfer: a transfer (*b*) by delivery may be made by any person who has the possession.

Therefore in case of a (*c*) loss by theft or accident, if the bill or note be transferable by mere delivery, the (*c*) thief or finder may transfer it: if by indorsement only, (*d*) he cannot.

So

(*a*) *Semb. Carvick v. Vickery*, Dougl. 630. 2d Ed. N. 134. *Smith v. Chester*, 1 Term Rep. 644.

(*b*) *R. Anon.* Salk. 126. 3 Salk. 70. *Miller v. Race*, Burr. 452. *Grant v. Vaughan*, Burr. 1516. *Peacock v. Rhodes*, Dougl. 611.

(*c*) By 9 and 10 W. 3. c. 17. s. 3. "If any inland bill be lost or miscarry within the time limited for its payment, the drawer shall, on security given upon request to indemnify him if such bill shall be found again, give another bill of the same tenor with the first:" and it should seem that the equity of this statute would comprehend indorsements also, and that the 3d and 4th of Ann. c. 9. (which gives the like remedies upon notes as were then in use on inland bills) would extend it to notes.

(*d*) *Vide Devallar v. Herring*, 9 Mod. 44. In this case however, it is advisable for the loser, in order to guard against the forgery of his indorsement, to give immediate notice of the loss to all the antecedent parties, and if payment has been made before such notice could be given to apprise the payee thereof without delay; for, upon such forgery, payment without notice by any antecedent party, would deprive the loser of his right against such party, and all the intermediate ones; and

a ne-

So an infant or feme covert may transfer a bill or note transferable by delivery; a bill or note transferable by indorsement only, not

The strict right to transfer a bill or note is with the payee or person to whom it may have been transferred from him.

On a bill or note payable to A. for the use of B. the (a) right to transfer is in B.

On a bill or note payable to several persons (not in partnership) the right to transfer is in all collectively—not (b) in any individually.

If the right to transfer a bill or note be in a feme sole, and she marry, it (c) devolves upon her husband.

If the person who has the right to transfer a bill or note die, it (d) devolves upon his personal representative; if he becomes bankrupt, on his assignees.

The transfer of a bill or note may be made either before the expiration of the time limited for its

a neglect in the attempt to give notice would preclude him from recovering back the money from the payee, if either he or any intermediate party between him and the loser took the bill or note *bona fide*, and gave a valuable consideration for it.

(a) *Vide* Evans v. Cramlington, Carth. 5. 2 Vent. 307. Skinn. 264.

(b) *R. Carvick v. Vickery*, Dougl. 630. 2d Edit. N. 134.

(c) *R. Connor v. Martin*, cit. 3 Willf. 5. D. acc. 1 Willf. 3. 10 Mod. 246. *Vide* Str. 516.

(d) *R. Rawlinson v. Stone*, 3 Willf. 1 Str. 1260. 2 Barnes 137. But note, a transfer by him will not give any right of action except against him personally. D. 1. Term Rep. 489.

payment,

payment, or, unless (a) the sum payable thereby be under five pounds, (b) afterwards.

Nay, (c) if a man indorse a bill or note before the sum or time of payment be mentioned therein, he will be precluded from saying that his indorsement was prior to the completion or issuing of the bill or note, even against a person who knew the contrary when he took it.

Upon the transfer of a bill drawn in sets, each part must be delivered to the person in whose favour the transfer is made: otherwise the same inconveniences must follow, which would ensue upon a neglect to deliver each of them to the payee.

The indorsement of a bill or note implies an undertaking from the indorser to the person in whose favour the indorsement is made; and every other person to whom the bill or note may afterwards be transferred exactly similar to that which is implied by drawing a bill, except that in the case of a note the stipulations with respect to the drawee's responsibility and undertaking do not apply; and a transfer by delivery only, if made on account of an antecedent debt, implies a similar undertaking from the person making it to the person in whose favour it is made.

(a) 17 G. 3. c. 30. s. 1. made perpetual by 27 G. 3. c. 16.

(b) *R. Dehors v. Harriot*, 1 Show. 163. D. 12 Mod. 410. Ld. Raym. 575.

(c) *R. Russell v. Langstaffe*, Doug! 496.

Bills of Exchange *and* Promissory Notes.

C A P. III.

Of the Acceptance of Bills.

THE doctrine of Acceptances applies to bills only; for a note may (*a*) be considered, on comparison with a bill, as accepted ere it issues.

An acceptance is an (*b*) engagement to pay a bill according to the tenor of the acceptance; and a general acceptance is an engagement to pay according to the tenor of the bill.

This engagement is made by the drawee of the bill or some (*c*) other person, to the (*d*) drawer or some of the other parties, before (*d*) the bill is drawn or afterwards, verbally (*e*) or in writ-

(*a*) 2 Bl. Com. 470.

(*b*) D. Burr. 1674. Bull. Ni. Pr. Ed. 1775. 270.

(*c*) Vide 12 Mod. 410, 411. Ld. Raym. 575. Com. 76. Burr. 1672. 1674.

(*d*) Vide Pillans v. Van Mierop, Burr. 1663. Mason v. Hunt, Dougl. 284. Powell v Monnier, 1 Atk. 611.

(*e*) Vide Lumley v. Palmer, Ann. 74. Str. 1000. Bavenstock v. Fitter, B. R. Sittings in M. 24 G. 3. Str. 817. 2 Will. 9. Burr. 1672. 1 Term Rep. 185.

ing ; and is either absolute or (*a*) conditional, and when made after the drawing of the bill, according to or (*b*) varying from its tenor.

An acceptance is seldom made before the bill is drawn by any other person than the drawee ; afterwards for the purpose either of promoting the negotiation of a bill where the drawee's credit is suspected, or to save the reputation and prevent the prosecution of some of the parties, where the drawee either cannot be found, is not capable of making himself responsible, or refuses acceptance, it is not uncommon : and it is called an acceptance for the honour of the (*c*) person on whose account it is made, and enures to the benefit of all the parties subsequent to that person.

Such of these acceptances as are made with the former view, are considered as made on account of the person in possession of the bill at the time they are made, and such as are made with the latter, unless they declare the contrary, on account of the drawer.

If a bill is drawn on several persons not connect-

(*a*) Vide *Smith v. Abbott*, Str. 1152. *Julian v. Shobrooke*, 2 Will. 9. Cowp. 574.

(*b*) Vide *Wegervlose v. Keene*, Str. 214. *Walker v. Atwood*, 11 Mod. 190. *Bishop v. Chitty*, Str. 1195. *Petit v. Benson*, Comb. 452.

(*c*) Vide *Lutw.* 899. *Beawes*, f. 31. 1st Ed. p. 418. f. 40. 42. 1st Ed. p. 419.

ed in partnership, an acceptance by one will bind him, but him (*a*) only.

On a bill drawn upon a man by the description of servant, a general acceptance will (*b*) bind him personally.

An acceptance after the bill is drawn may be made even after (*c*) the time appointed for its payment.

In such case, an acceptance to pay according to the tenor, will (*c*) be considered as a general acceptance.

A written acceptance is either made upon the bill or (*d*) elsewhere.

On a written acceptance by the drawee, his name need not appear, and any words written by him upon the bill, not putting a direct negative upon it's request, as, "accepted," (*e*) "presented," "seen," (*e*) "the day of the month," or a (*f*) direction to a third person to pay it, is *primâ facie* a complete acceptance.

Nay, a (*g*) modern Reporter of some authority

(*a*) Mar. 2d Ed. 16. Beawes, f. 228. 1st Ed. p. 444. Molloy, B. 2. c. 10. f. 18.

(*b*) R. Thomas v. Bishop, Ann. 1. Str. 955.

(*c*) R. Jackson v. Pigott, Ld. Raym. 364. 12 Mod. 211. Salk. 127. Mitford v. Walcot, Ld. Raym. 574. 12 Mod. 410. Salk. 129.

(*d*) Vide Pillans v. Van Mierop, Burr. 1663. Mason v. Hunt, Dougl. 284. Powell v. Monnier, 1 Atk. 611.

(*e*) D. Comb. 401. Vide Powell v. Monnier, 1 Atk. 611.

(*f*) Moor v. Withy, Bull. Ni. Pr. Ed. 1775. 270.

(*g*) Ann. 75.

would

would wish us to believe that an express refusal to accept written on a bill is an acceptance : but this cannot be law.

A bill was sent by the post to the drawee for acceptance ; he entered it in his bill book, wrote upon it the number of the entry, and kept it ten days ; on the tenth day he wrote upon it the day of the month, and returned it, saying *he could not pay it*: it appeared that the drawee entered in his bill book every bill he received, whether he meant to accept it or not, and the Court (*a*) seemed to think these facts bid not amount to an acceptance.

On a written acceptance by any other person, it should seem essential that his name should appear ; and I should apprehend such acceptance ought to be clear and unequivocal.

Upon a parol acceptance, equivocal words are (*b*) to be taken most strongly against the person making it.

A promise to accept, if made upon an (*c*) executed consideration, or if it (*d*) influences any person to take or retain a bill, is a complete acceptance as to the person to whom the promise is made in the one case, and the person influenced in the other, and all the subsequent parties in each.

(*a*) *Powell v. Monnier*, 1 Atk. 611.

(*b*) *D. Bavenstock v. Fitter*, B. R. Sittings in M. 24 G. 3.

(*c*) *R. Pillans v. Van Mierop*, Burr. 1663.

(*d*) *Vide Cowp.* 573, 574. *Dougl.* 286.

Thus (a) a promise to accept such bills as B. should after the expiration of a month draw on account of a debt from C. to B. was held a complete acceptance.

But a promise to accept made upon an executory consideration is not (b) binding so long as such consideration remains executory, unless it influences some person to take or retain the bill.

A verbal promise to accept, though the party expressly defer a written acceptance, as where he says, "Leave the bill, and I will accept it," is a (c) complete acceptance.

So a verbal promise to accept a returned bill when it shall come back, is binding, (d) if it do come back.

What shall be considered as an absolute and what as a conditional acceptance, is a (e) question of law.

An acceptance *to pay when remitted for* is (f) a conditional acceptance.

So an answer by a drawee who lived in London, *that a ship was consigned to him and a person in Bristol, and that till he should know to which port the ship would come, he could not accept*, connected with a subsequent answer *that the bill was a good one*,

(a) Pillans v. Van Mierop, Burr. 1663.

(b) Vide Burr. 1666.

(c) D. Molloy, B. 2. c. 10. f. 20. Mar. 2d Ed. 17.

(d) R. Cox v. Coleman, cit. Ann. 75.

(e) Semb. 1 Term Rep. 186.

(f) R. Banbury v. Liffet, Str. 1211.

and would be paid though the ship should be lost, was (a) held a conditional acceptance only: it being clear, that the drawee looked for an opportunity of reimbursing himself, and had three events in contemplation—the ship's arrival at Bristol, her arrival at London, and her loss; in the two latter he should have the opportunity, and therefore accepted; in the latter, as he should not, he did not accept.

But an answer by the drawee, that he would pay if I. S. would not, but that he must first apply to him, not that he thought he would pay, but because he judged it right to put him to the trial, with an assurance to the holder that he might rest satisfied of the payment, was held (b) an absolute acceptance.

If a man purposes making a conditional acceptance only, and commits that acceptance to writing, he should be careful to express the conditions therein; for of any verbal condition he may annex to the acceptance he will not be at liberty to avail himself against any (c) subsequent transferee, if either such transferee, or any intermediate party between him and the person to whom the acceptance was given, took the bill without notice of such condition, and gave a valuable consideration for it, and at all events the onus of proving such acceptance will be upon the acceptor.

(a) *Sproat v. Matthews*, 1 Term Rep. 182.

(b) *R. Wilkinon v. Lutwidge*, Str. 648.

(c) *Semb. Dougl.* 286.

A con-



A conditional acceptance becomes, when its conditions are performed, absolute.

Thus an answer by the drawee, that he could not accept until a navy bill should be paid, was thought (*a*) to operate as an absolute acceptance upon the payment of the navy bill.

But where the drawee said he could not accept without further directions from I. S. and I. S. afterwards desired him to accept, and draw upon A. B. for the amount, the Court held (*b*) the mere act of drawing upon A. B. would not make this an acceptance, although the actual payment of the bill on him might.

An acceptance varying from the tenor differs from it either in the (*c*) sum, the (*d*) time, the (*e*) place, or (*f*) mode of payment.

But though any of these acceptances bind the person making them, the drawer of a bill is intitled from the undertaking of the drawer and indorsers to expect an absolute acceptance by (*g*) the drawee, or if there be several not connected in

(*a*) *Pierfon v. Dunlop*, Cowp. 572.

(*b*) *Smith v. Nissen*, 1 Term Rep. 269.

(*c*) *Wegerlofe v. Keene*, Str. 214.

(*d*) *Walker v. Atwood*, 11 Mod. 190. Vide Str. 221.

(*e*) *Bishop v. Chitty*, Str. 1195. *Smith v. De la Fontaine*, B. R. T. 25 G. 3. Vide Appendix, No 5.

(*f*) *Petit v. Benson*, Comb. 452.

(*g*) Mar. 2d Ed. 22.

partnership by (a) each, written by him or them personally upon the bill for the payment of the full (b) sum of money mentioned therein (c) according to its tenor, (d) specifying (if none be mentioned for the purpose) a place for its payment, and (e) expressing, if the bill be payable within a limited time after sight, the time of its presentment for acceptance; and may reject any other.

If upon the offer of any other acceptance the holder does any act expressing a non-acquiescence therein, as if he gives notice to any of the antecedent parties generally that acceptance is refused, the offer (f) is not binding.

The drawee accepted at an enlarged period, the holder struck out the day mentioned in the acceptance, and substituted the day when the bill was regularly payable; the acceptor refused payment at that day, and the holder restored the acceptance to its original form; the Court (g) held it continued binding.

(a) D. Str. 217. Molloy, B. 2. c. 10. f. 18, 19. Mar. 2d Ed. 16.

(b) Mar. 2d Ed. 17. Beawes, f. 218. 1st Ed. p. 443. Molloy, B. 2. c. 10. f. 20.

(c) Mar. 2d Ed. 21. Beawes, f. 221. 1st Ed. p. 444. Molloy, B. 2. c. 10. f. 28.

(d) D. 12 Mod. 410.

(e) D. Beawes, 1st Ed. 453.

(f) R. Sproat v. Matthews, 1 Term Rep. 182.

(g) R. Price v. Shute. Beawes, f. 222. 1st Ed. p. 444.

The obligation also of a complete acceptance may be (a) waived.

This waiver may be either express or implied.

An (b) agreement to consider an acceptance as at an end, or a (c) message to the acceptor upon an accommodation bill, *that the business was settled with the drawer, and he need give himself no farther trouble*, is an express waiver; the receipt (d) of the known consideration of the acceptance, an implied one.

Rowland Hunt in Dominica, agreed that his partner Thomas Hunt in London, should, on consignment of a cargo and an order for its insurance accept bills for £. 3,600. The cargo was consigned, and the order for insurance given. Thomas Hunt effected the insurance, but refused to accept the bills: after some negotiation, the holder took the consignment and policy of assurance, and agreed to apply the net proceeds towards payment of the bills; and the Court held, (d) that by so doing he had waived the right to insist upon Rowland Hunt's agreement as an acceptance. >

But a neglect to call upon an acceptor, or an indulgence to any of the other parties for what time

(a) R. Black v. Peele, cit. Dougl. 236, 237. Walpole v. Pulteney, cit. Dougl. 236, 237. — Mason v. Hunt. Dougl. 284.

(b) Walpole v. Pulteney, cit. Dougl. 236, 237.

(c) Black v. Peele, cit. Dougl. 236, 237.

(d) Mason v. Hunt, Dougl. 284.

soever, shall never (a) be considered as a waiver of his acceptance.

The holder of a bill received a part of the money from the drawer, and took a promise from him upon the back of the bill for the payment of the residue in three months; the Court (b) held this no waiver of the acceptance.

(a) R. Dingwall v. Dunster, Dougl. 235.

(b) Ellis v. Galindo, Dougl. 238. 2d Ed. n. 71.

Bills of Exchange *and* Promissory Notes.

C A P. IV.

*Of the Presentment for Acceptance or Payment—And
Notice of a Nonacceptance or Nonpayment.*

THE receipt of a bill or note implies an undertaking from the receiver to every person who may possibly be prejudiced by a nonpayment to (a) present in proper time the one, where necessary, for acceptance, and each for payment; to reject, unless with his concurrence any acceptance short of an absolute one according to the tenor by the drawee, to (b) allow no extra time for payment, and to give (c) notice without delay to such person of

(a) *R. Darrach v. Savage*, 1 Show. 155. *Manwaring v. Harrison*, Str. 508. *Coleman v. Sayer*, Str. 829. *East India Company v. Chitty*, Str. 1175. *Hankey v. Trotman*, Blackst. 1. *Chamberlyn v. Delarive*, 2 Willf. 353. *Appleton v. Sweetapple*, B. R. M. 23 G. 3. Vide Appendix, N^o 6. and vide 1 Show. 318, 319. *Skin. 410*. *Salk. 127. 132*. *Ld. Raym. 444*. 12 *Mod. 244*. *Burr. 674*. *Rushton v. Aspinall*, Dougl. 654. 1 *Term Rep. 169*.

(b) *D. 1 Term Rep. 169. 170*. Vide *Kellock v. Robinson*, Str. 745. and *Taffel v. Lewis*, *Ld. Raym. 744*.

(c) *R. Anon. 1 Vent. 45*. *Bank of England v. Newman*, Com. 57. *Allen v. Dockwra*, *Salk. 127*. *Pepys v. Lambert*, Str. 707. *Gee v. Brown*, Str. 792. *Goostrey v. Mead*,

of a failure in the attempt to procure a proper acceptance or payment : and a (*a*) default in any of these respects will discharge such person from all responsibility on account of a nonacceptance or non-payment.

The (*b*) drawer of a bill, and (where the acceptance appoints the payment to be made elsewhere than at the acceptor's house) the (*c*) acceptor, and every transferer of a bill or note is, *prima facie*, to be presumed prejudiced by a nonpayment : but the (*d*) contrary may be proved.

Payment (*e*) of part, or (*f*) a promise to pay after full notice of the default sufficiently evinces the contrary : a payment or promise without such notice, does (*g*) not.

Mead, Bull. Ni. Pr. 271. Daggliff v. Weatherby, Blackst. 747. Tindal v. Brown, 1 Term Rep. 167. And vide Rush-ton v. Aspinall, Dougl. 654. D. Salk. 131. Comb. 384. Ld. Raym. 993. 3 Salk. 69.

(*a*) See the cases cited under the letters (*a*) and (*c*) in the preceding page.

(*b*) D. 1 Term Rep. 409.

(*c*) R. Bishop v. Chitty, Str. 1195. R. cont. Smith v. De la Fontaine, B. R. T. 25 G. 3. Vide Appendix, N^o 5.

(*d*) R. Bickerdike v. Bolman, 1 Term Rep. 405. Sproat v. Matthews, 2 Term Rep. 713.

(*e*) R. Vaughan v. Fuller, Str. 1246.

(*f*) Vide Rogers v. Stephens, 2 Term Rep. 713. 1 Term Rep. 409. Anson v. Bailey, Bull. Ni. Pr. Ed. 1775. 276.

(*g*) Blefard v. Hirst, Burr. 2670. Goodall v. Dolley, 1 Term Rep. 712.

The presentment is to be made at the place where a bill or note is payable.

If no other place be mentioned for the purpose, a bill or note is payable at the drawee's or maker's place of residence.

In this case, if the place of residence be mentioned in the bill, and it appears upon a proper inquiry, that the drawee or maker either never lived there or has removed to an unreasonable distance or an (*a*) unknown place, the bill or note is to be considered as dishonoured.

Upon the removal of the drawee or maker, the holder is (*b*) bound to endeavour to find out to what place he has removed, and make the presentment there.

If on a presentment it appear that the drawee or maker is dead, the holder (*c*) ought it should seem to enquire after his personal representative, and if he lives within a reasonable distance, present the bill or note to him.

The (*d*) bankruptcy, or known insolvency of a drawee or maker, is no excuse for a neglect to make a presentment.

A presentment should be made at a seasonable time.

(*a*) D. Ld. Raym. 743.

(*b*) R. Collins v. Butler, Str. 1087.

(*c*) Vide Marius, 2d Ed. 33. Molloy, B. 2. c. 10. f. 34.

(*d*) D. acc. Dougl. 497. 1 Term Rep. 408.

If by the known custom of any place bills and notes are only presentable within limited hours, a presentment *there* out of those hours is unseasonable.

And so is a presentment out of the hours of business to a person of a particular description in a place where by the known custom of that place all persons of his description begin and leave off business at stated hours.

A presentment for acceptance is not (*a*) necessary, except upon bills payable within a limited time after sight.

The period within which this presentment must be made, has in no case been ascertained; and it must vary according to circumstances: but it should seem sufficient, and then sufficient only, if upon those circumstances there has been no unreasonable delay.

No delay warranted by the common course of business is unreasonable.

(*a*) Vide Mar. 2d Ed. 12, 13. Beawes, f. 266. 1st Ed. 453. Molloy, B. 2. c. 10. f. 16. Burr. 2671, 2672. 1 Term Rep. 713. Indeed, in all cases where a bill is remitted to a factor or agent for the benefit of the principal, it may be his duty to apply for an acceptance, and he may be answerable for any loss his principal may suffer by a neglect; but this neglect does not affect the bill if payable otherwise than after sight, nor the principal's right thereon. Vide Beawes, f. 49. 1st Ed. p. 420. Mar. 2d Ed. 12, 13.

Upon a presentment for acceptance, the bill should be left with the drawee (*a*) twenty-four hours, unless he in the interim either accepts or declares a resolution not to accept.

But a bill or note must not be left with the person who is to pay it on a presentment for payment; if it be, the presentment is (*b*) not considered as made until the money is called for.

The time when a presentment for payment must be made, depends upon the time when the bill or note is payable.

A bill or note payable on demand, or at sight (*c*), is payable immediately upon presentment, and must therefore be presented within a reasonable time after it's receipt.

What shall be considered as a reasonable time (*d*) is a matter of law, and will depend on the occasion upon which the bill or note was given.

(*a*) Vide Mar. 2d Ed. 16. Mal. B. 3. c. 5. f. 1. Ld. Raym. 281.

(*b*) Semb. Hayward v. Bank of England, Str. 550. Hankey v. Trotman, Blackst. 1. Semb. cont. Turner v. Mead, Str. 416. Hoar v. Da Costa, Str. 910.

(*c*) It has been doubted, (J'anfon v. Thomas, B. R. T. 24 G. 3. Vide Appendix, N^o 4.) whether days of grace are not to be allowed upon bills payable at sight, as well as upon bills importing to be payable within a limited time after a certain event (vide post p. 33.); but the contrary is laid down in Beawes, f. 252. 256. 1st Ed. p. 447. *See A. Term R. 740.*

(*d*) Appleton v. Sweetapple, B. R. M. 23 G. 3. Vide Appendix, N^o 6.

Thus

Thus upon such a bill or note given for cash by a person who makes the profit by the money on such bills or notes a source of his livelihood, it is difficult to say what length of time is to be considered unreasonable: while upon such bills or notes given by way of payment, or paid into a banker's, any time beyond that which the common course of business warrants (*a*), is.

Upon a bill or note of this kind given by way of payment, the course of business seemed formerly to allow the party to keep it, if it was payable in the place where it was given, until the (*b*) morning of the next day of business after its receipt; and till the next post, if payable elsewhere; (*c*) but not longer.

Thus, upon a note of this kind payable in London, and given there in the morning, a presentment the next morning was held (*d*) sufficiently early; the presentment of a similar note given in London at half past eleven on the Monday, at two on the Tuesday, too (*e*) late.

(*a*) Vide Str. 416.

(*b*) Vide Fletcher v. Sandys, Str. 1248. Ward v. Evans, Ld. Raym. 928. Moore v. Warren, Str. 415. Turner v. Mead, Str. 416. Hoar v. Da Costa, Str. 910. Hill v. Lewis, Salk. 132.

(*c*) Vide Manwaring v. Harrison, Str. 508. East India Company v. Chitty, Str. 1175.

(*d*) R. Hill v. Lewis, Salk. 132.

(*e*) R. East India Company v. Chitty, Str. 1175.

But in (*a*) a very modern case, deferring the presentment of a similar note given in London at one until the next morning, was held unreasonable.

And in all cases the presentment ought, it should seem, to be made (*b*) the first time the holder goes or sends to upon business, the person who is to make the payment.

A bill or note of this kind, given by way of payment to a banker, must (*c*) be presented by him as soon as if it had been paid into his house by a customer.

A bill or note of this kind, paid into a banker's, if payable at the place where the banker lives, must be presented the next time the banker's clerk goes (*d*) his rounds.

A bill or (*e*) note importing to be payable within a limited time after a certain event, is not in fact payable in any event until (*f*) two days after the expiration of that time, nor unless the third be a day of public rest, until (*f*) three.

These extra days are called Days of Grace.

(*a*) *Appleton v. Sweetapple*, B. R. M. 25 G. 3. Vide Appendix, N^o 6.

(*b*) *Semb. cont. Hill v. Lewis*, Salk. 132.

(*c*) *Semb. Hankey v. Trotman*, Blackst. 1.

(*d*) Vide *Hankey v. Trotman*, Blackst. 1.

(*e*) It is not settled whether by law any days of grace ought to be allowed on notes, though in practice they usually are. Vide *Dexlaux v. Hood*, Bull. Ni. Pr. 274. Ed. 1775. *Ward v. Honeywood*, Dougl. 62. *May v. Cooper*, Fort. 376.

(*f*) Vide *Taffel v. Lewis*, Ld. Raym. 743. 2 Bl. Com. 469. Mar. 2d Ed. 25.

Different

Different (a) countries vary in the number of days allowed by way of grace.

Upon the last day of grace, and within a reasonable time before the expiration of that day, a bill or note must be presented for payment.

Upon a bill payable within a limited time after sight, the time must be computed from its (b) presentment for acceptance; and upon a bill or note payable within a limited time after the date, which has no date, from (c) the day it issued.

The calculation of the time depends upon the different modes of computing time.

All places with which we are in the habit of negotiating bills, compute their time as we do (except that Russia adheres to the old style) by years reckoned in a series from the birth of our Saviour, and divided each into twelve months, and (except in every fourth year, which consists of three hundred and sixty-six) three hundred and sixty-five days.

Upon a bill drawn at a place using one style, and payable at a place using the other, if the time is to be reckoned from the date, it shall be computed according to the style of the place at which it was drawn,

(a) Beawes, f. 260. 1st Ed. p. 449.

(b) Beawes, f. 252. 1st Ed. p. 447. Marius, 2d Ed. p. 19. says from the day of acceptance only.

(c) Vide *Armitt v. Breame*, *Ld. Raym.* 1076.

otherwise according to the (*a*) style of the place where it is payable; and in the former case the date (*b*) must be reduced or carried forward to the style of the place where the bill is payable, and the time reckoned from thence.

Thus on a bill dated the first of March old stile, and payable here one month after date, the time must be computed from the 19th of February new stile; and on a bill dated the 19th of February new stile, and payable at Petersburg one month after date, from the first of March old stile.

Where the time after the expiration of which a bill or note imports to be payable is limited by months, it is to be computed by (*c*) calendar not lunar months.

Thus on a bill or note payable one month after date, and dated the first of January, the (*d*) month will not expire until the first of February.

On a bill or note payable one or several months after date, the wording of the date may make a material difference in the expiration of the time.

Thus if a bill or note payable one month after date, bear date the 28th of February, the month

(*a*) Vide Mar. 2d Ed. p. 25. Beawes, f. 251. 1st Ed. p. 447.

(*b*) Mar. 2d Ed. p. 22.

(*c*) Mar. 2d Ed. p. 19.

(*d*) Vide Mar. 2d Ed. p. 24. Beawes, f. 253. 1st Ed. p. 447.

will expire the 28th of March; had it borne date the *last* of March, it (*a*) would not have expired until the 31st: and, on the other hand, upon a bill or note payable one month after date, and dated the 31st of October, the month does not expire until the 1st of December; had it been dated the *last* of October, it (*a*) would have expired the 30th of November.

Where the time is computed by days, the day on which the event happens is to be (*b*) excluded.

Thus on a bill or note payable ten days after date, dated the 1st of January, the time does not expire until the 11th.

Instead of an express limitation by years, months, or days, we continually find the time on bills drawn or payable at Amsterdam, Rotterdam, Hamburgh, Altona, Paris or any place in France, Cadiz, Madrid, Bilboa, Leghorn, Genoa, or Venice, limited by the *usance*, that is, the usage between those places and this country: because, in the infancy of bills, all bills between this country and any of those places respectively were usually made payable after the same interval.

An *usance* between this kingdom and Amsterdam, Rotterdam, Hamburgh, Altona, Paris or

(*a*) Q.

(*b*) Vide *Bellasis v. Hester*, Lutw. 1591. Ld. Raym. 281. p. Treby, C. J. — *Neville, J. and Powell, J. contra. Coleman v. Sayer*, 1 Barnard. B. R. 303. Str. 829. *May v. Cooper*, Fort. 376.

any place in France, is one calendar month from the date of the bill; an usance between us and Cadiz, Madrid, or Bilboa, two; and an usance between us and Leghorn, Genoa, or Venice, three.

A double usance is double the accustomed time; an half usance, half.

Upon (a) an half usance, if it be necessary to divide a month, the division, notwithstanding the difference in the length of months, shall contain fifteen days.

Notice (b) must be given of a failure in the attempt to procure an acceptance, though the application for such acceptance might have been unnecessary.

So if the drawee offer a partial or conditional acceptance, or an acceptance at an extended period, or any other person an absolute one, though the holder may be willing to acquiesce in such acceptance, he must give notice.

In that case however, if he wishes to have the power of availing himself of it, he should mention in his notice the acceptance offered, for a notice generally of nonacceptance shews (c) he did not acquiesce in such offer.

(a) Mar. 2d Ed. p. 23.

(b) R. Blesard v. Hirst, Burr. 2670. Goodall v. Dolley, 1 Term Rep. 712.

(c) R. Sproat v. Matthews, 1 Term Rep. 182.

A neglect to give notice upon the refusal of any thing more than a conditional acceptance, is done away by the completion of those conditions before the bill becomes payable; and a neglect upon the refusal of any thing more than a partial acceptance, discharges the persons intitled to it only from their responsibility on account of the nonpayment of the residue.

The notice (*a*) ought to let the person to whom it is given know that he shall be held to his responsibility, as well as apprize him of the nonacceptance or nonpayment.

To give this notice, in the case of a foreign bill, effect, it is (*b*) necessary that a minute of the nonacceptance or nonpayment, and a solemn declaration on the part of the holder against any loss to be sustained thereby, (which minute and declaration is called a protest) should be made out by a notary public, or if there be no such notary in or near the place where the bill is payable, an inhabitant in the presence of two witnesses, and that a copy or some other memorial of it should accompany the notice.

Such protest may also be made on the (*c*) nonacceptance of any inland bill for the payment of

(*a*) D. 1 Term Rep. 169, 170.

(*b*) D. Ld. Raym. 993. 6 Mod. 80. Salk. 131. 3 Salk. 69. Salomons v. Stavely, B. R. M. 24 G. 3. Vide Dougl. 659. 2d Ed. n. 144. Semb. 2 Term Rep. 717.

(*c*) 3 and 4 Ann. c. 9. s. 4.

five pounds or upwards, within a limited time after date, wherein the value is expressed to have been received, or (*a*) after an acceptance written on such a bill, its nonpayment.

But a protest upon an inland bill is never necessary where (*b*) the bill is for the payment of less than twenty pounds; and on such as are for the payment of more, a neglect to procure it (*c*) only precludes the holder from recovering against the persons intitled to notice any special damages or costs occasioned by the nonacceptance or nonpayment, and interest.

To such of the parties as reside in the place where the presentment was made, the notice must be given, at the farthest, by the expiration of the (*d*) day following the failure; to those who reside elsewhere, by (*e*) the next post.

A notice from the holder, or any other person who may have a right of action upon the bill, enures to the benefit of all the antecedent parties,

(*a*) 9 and 10 W. 3. c. 17. s. 1.

(*b*) 3 and 4 Ann. c. 9. s. 6.

(*c*) R. Brough v. Perkins, *Ld. Raym.* 993. 6 *Mod.* 80. *Salk.* 131. 3 *Salk.* 69. *D. Ann.* 77, 78. *Semb. Harris v. Benfon, Str.* 910.

(*d*) *D.* 1 *Term Rep.* 169.

(*e*) *D. Malynes, B.* 3. c. 6. s. 1. 1st *Ed.* p. 265. *Mar.* 2d *Ed.* p. 24. 1 *Term Rep.* 168, 169. *D. arg. Dougl.* 497. *Semb. Str.* 217.

and therefore makes an additional notice from any of those parties unnecessary.

To guard however against any omission, it is advisable for each party immediately upon the receipt of notice, to give a fresh one to such of those persons who are liable to him on account of the non-acceptance or nonpayment, against whom he must prove notice.

Bills of Exchange *and* Promissory Notes.

C A P. V.

Nonacceptance or Nonpayment. Remedy inde.

UPON a nonacceptance or nonpayment, the holder of a bill or note may sue all the persons liable to him on account of such nonacceptance or nonpayment, either at the same time or successively.

An indorser, an acceptor for the honour of an indorser, or the (a) drawer, is after payment by him, holder: but he holds in his original capacity, not (b) as transferee of the person he has paid.

An action (c) may be brought upon a nonacceptance before the expiration of the time limited by a bill for its payment.

All the antecedent parties are liable to the holder on account of a nonacceptance or nonpayment; and if the bill or note was transferred to him for a precedent consideration by delivery, the deliverer.

If the holder sues all the persons liable at the same time, a judge will not (d) stay proceedings

(a) R. Symonds v. Parminter, 1 Willf. 185. 4 Bro. Parl. Ca. 604. Louviere v. Laubray, 10 Mod. 36.

(b) Vide Louviere v. Laubray, 10 Mod. 36.

(c) R. Bright v. Parrier, Bull. Ni. Pr. Ed. 1775, p. 269. Milford v. Mayer, Dougl. 55.

(d) Agr. Golding v. Grace, Bl. 749. R. p. Ld. Kenyon at chambers. Barrow v. Bowman, M. 29 G. 3.

in any one action but upon payment of the money recoverable in that, and the costs in such of the rest in which judgment has not been obtained.

But though he may recover judgments in all the actions, he (a) can only once recover the sum recoverable on account of the bill or note, though he may take out execution for the costs in all.

Therefore (b) where the holder of a note after judgments against the maker, and one of the indorsers rejected a tender of the money due on account of the note upon one, and the costs in each, the Court made an order to restrain him from taking out execution.

If the holder at first sue some only of the persons liable, he may at any time before satisfaction sue all or any of the rest.

Obtaining (c) a judgment is no satisfaction, even as to the parties subsequent to him against whom the judgment is obtained.

And (d) the actual taking of a man in execution, and discharging him upon a letter of licence, is no satisfaction as to any of the antecedent parties.

Receiving dividends under a commission of bankruptcy is a satisfaction *pro tanto* only.

(a) D. 2. Vez. 115.

(b) Windham v. Withers, Str. 515.

(c) R. Claxton v. Swift, 2 Show. 441. 494. Lutw. 832.

(d) R. Hayling v. Mulhill, Blackst. 1235.

If more than one of the persons liable on account of the nonacceptance or nonpayment of a bill or note become bankrupts, the holder may prove, under the separate commission of each, the full (a) amount of the money due to him upon the bill or note at the time he makes his proof, and receive dividends under each upon the sums proved until (a) he shall in the whole have received such amount.

But after the receipt of a dividend under one commission, he (b) cannot prove under any of the rest more than the sum remaining due after deducting such dividend.

So after a partial satisfaction, the holder must not (c) in an action take a verdict for more than the sum remaining due; if he do, the Court will either make him correct the verdict, and pay any expence the mistake may have occasioned, or grant a new trial.

Thus where (d) the holder of a bill, after having

(a) R. Ex parte Wildman, 1 Atk. 109. 2 Vez. 113. Ex parte Royd, cit. 2 Vez. 114. Ex parte Bennett, 2 Vez. 114. and vide 2 P. Williams 90. 4th Ed. n. 1. and 408. 4th Ed. n. 1. Cooke's Bankrupt Laws, 170.

(b) R. Cooper v. Pepys, 1 Atk. 106. D. 2 Vez. 116. and vide 2 P. Williams 408. 4th Ed. N. 1. Cooke's Bankrupt Laws, 170.

(c) R. Bacon v. Searles, C. B. M. 29 G. 3. Pierſon v. Dunlop, Cowp. 571. Semb. cont. 2 Will. 262.

(d) Pierſon v. Dunlop, Cowp. 571.

received 180*l.* upon it from the drawer, sued and took a verdict for the whole sum against the acceptor, the Court refused to discharge a rule *nisi* for a new trial, but upon the terms that the plaintiff should remit the 180*l.* with interest from the time when it was paid and defray the expence of a suit the defendant had instituted in the Exchequer for relief against the verdict.

In an action upon a bill or note, the plaintiff is in general intitled to recover the money payable thereby, with (*a*) interest from (*b*) the time when it would have been regularly payable, and (*c*) all incidental expences occasioned by nonacceptance or nonpayment.

Thus, upon a bill or note payable on presentment, interest (*d*) must be computed from the presentment.

But a neglect to procure a protest upon any inland bill for the payment of twenty pounds upon which a protest might have been made, will (*e*) preclude the holder from recovering such interest or expences from any person intitled to notice of

(*a*) D. Mar. 2d Ed. 13. Bunb. 119. Blackst. 760, 761.

(*b*) Vide 6 Mod. 138. Pl. Aff. 28.

(*c*) Vide Mar. 2d Ed. 13. 1 Willf. 185. 4 Bro. Parl. Ca. 607. 2 Term Rep. 52.

(*d*) R. acc. Pl. Aff. 28. Vide Blackst. 761. 6 Mod. 138.

(*e*) Vide 3 and 4 Ann. c. 9. f. 5. Brough v. Perkins, Ld. Raym. 992. Salk. 131. 3 Salk. 69. 6 Mod. 80. Harris v. Benson, Str. 910.

the nonacceptance or nonpayment; from any other person, (a) not.

The only incidental expence in the case of the person who made the presentment is the charge of the notice; in the case of any antecedent party, that of the return of the bill or note must be added.

Upon a foreign bill, the re-exchange forms a part of the expence of the return.

On the return of a bill drawn here for the payment of pagodas in the East Indies, the (b) practice is to allow for the sum payable by the bill, interest, and all incidental charges, after the rate of ten shillings for each pagoda; and it has been (c) determined that this practice was lawful, even where the price allowed for each pagoda on the discount of the bill was only six shillings and sixpence.

Under a commission of bankruptcy, the holder of a bill or note is not (d) intitled to any interest or charges accrued or incurred after the act of bankruptcy to which the commission relates.

The action usually brought on account of a bill or note, is a special action of assumpsit thereon; but perhaps a special action of (e) debt, debt on
an

(a) Vide *Powel v. Monnier*, 1 Atk. 611.

(b) Vide *Auriol v. Thomas*, 2 Term Rep. 52.

(c) *Auriol v. Thomas*, 2 Term Rep. 52.

(d) *R. Anon.* 1 Atk. 140.

(e) In *Anon. Hardr.* 485. it was held that the payee of a
bill

an *indebitatus* or an (a) *indebitatus assumpsit*, might be maintained thereon.

But instead of suing upon the bill or note, the holder may use it merely as evidence in another action.

A bill is *prima facie* evidence of money lent by the payee to the drawer, and a note of money (b)

bill could not maintain debt against the acceptor, because there was no privity between them, and because the acceptance was a collateral undertaking only. In *Welch v. Craig*, Str. 680. 8 Mod. 373. it is held that debt will not lie upon a note; but it does not appear by or against what particular party that action was brought. In 1 Mod. Ent. 312. pl. 13. it is said that debt will lie against the maker of a note, not against the indorser. And in *Morgan's Precedents*, 458, is an entry of a declaration in debt by the administratrix of the payee of a note against the maker.

(a) In *Brown v. London*, 1 Freeman 14. 1 Mod. 285. 1 Vent. 152. it was held that an *indebitatus assumpsit* would not lie upon the acceptance of a bill, *Twisden dubitante*. And there is a *dictum* to the like effect in *Comb.* 204. But in another report of *Brown v. London*, 1 Lev. 298. the Court is stated to have resolved in favour of the defendant, because the custom was not set out in the count. In *Skinn.* 346. it is said it will only lie against the drawer upon a bill importing to have been given for value received. In *Salk.* 125. 12 Mod. 37. it is laid down generally that an *indebitatus assumpsit* will not lie upon a bill. In 12 Mod. 345. it is held that the payee of a bill importing to have been given for value received, may maintain an *indebitatus assumpsit* against the drawer. And in *Kessebower v. Tims*, B. R. E. 22 G. 3. Ld. Mansfield held that the indorsee of a note might maintain *indebitatus assumpsit* thereon against the person who indorsed it to him.

(b) D. 12 Mod. 380.

lent by the payee to the maker, and each consequently of money (a) had and received by the drawer or maker to the use of the holder.

Against the very person also from whom he received the bill or note, the holder may sue for the consideration merely upon which the bill or note was given.

In case of a transfer by delivery, no (b) action can be maintained against the deliverer, except on account of such consideration.

Such (c) of these actions as are of the same species, (as all the actions of assumpsit, and all the actions of debt) may be joined in the same suit.

In that case however they lose the name of actions, which is in a term properly applicable to all the causes of the suit collectively, and are called Counts.

A special count upon a bill or note states in their order all the facts necessary to maintain the action.

To give a full idea of this count, and open the way to the observations necessary to be made upon it, I shall insert a comprehensive one in assumpsit upon a foreign bill, which will sufficiently elucidate those on inland bills or notes and those in debt.

(a) R. Grant v. Vaughan, Burr. 1516.

(b) Vide ante 17.

(c) Vide Blackst. 850. 1 Term Rep. 276.

Count in Assumpsit upon a Foreign Bill.

London, } John Mills v. Thomas Roper
to wit. } and Stephen Howe.

For that whereas on (1) the first of January 1789, at (2) London aforesaid, in the parish and ward aforesaid, certain persons trading and using commerce in copartnership together within this kingdom, to wit, at London aforesaid, in the parish and ward aforesaid, under the name, stile, and firm of Gaunt and Co. according (3) to the usage and custom of merchants from time immemorial used and approved of, made their certain bill of exchange in writing, their (4) copartnership name, stile, and firm aforesaid being thereunto subscribed, bearing (5) date the day and year aforesaid, and directed to one Henry Hunt at Venice in Italy, in parts beyond the seas, and (6) thereby requested the said Henry at double usance to pay that his first of exchange, (second (7) and third of the same tenor not paid) to the said Thomas and Stephen or (8) their order, a certain sum of foreign money called in the said bill 700 ducats, value received, and then and there delivered (9) the said bill to (10) the said Thomas and Stephen, which (11) said
E bill

bill the said Henry Hunt afterwards, to wit, on (12) the day and year aforefaid at Venice, to wit, at London aforefaid, in the parish and ward aforefaid, on sight thereof duly according to the usage and custom of merchants accepted; and the said Thomas and Stephen afterwards, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, (13) on the day and year aforefaid, at London aforefaid, in the parish and ward aforefaid, by their certain indorsement in writing then and there made upon the said bill, their proper hands being thereunto subscribed, according to the usage and custom of merchants appointed the (14) contents of the said bill to be paid to one Peter White or (15) his order, and then and there (16) delivered the said bill so indorsed to the said Peter, (17) and the said Peter afterwards, and before the payment of the said sum of money in the said bill mentioned, or of any part thereof, to wit, on the day and year aforefaid, at London aforefaid, in the parish and ward aforefaid, by his certain indorsement in writing, then and there made upon the said bill, his proper hand being thereunto subscribed, appointed the contents of the said bill to be paid to the said John, and then and there delivered the said bill

bill so indorsed to the said John, of (18) which said indorsements the said Henry afterwards, to wit, on the day and year aforesaid at Venice, to wit, at London aforesaid, in the parish and ward aforesaid, had notice. And the said John in fact says, that (19) an usance mentioned in any bill of exchange drawn in London, and payable in Venice, is and at the several times aforesaid was three months from the date of the said bill, and no other time whatever and (20) that afterwards and when the said bill had according to the tenor and effect thereof become payable, to wit, on (21) the fourth day of July in the year aforesaid, at Venice aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, the said bill was duly, according to the usage and custom of merchants, shewn and presented to the said Henry for payment; and the said Henry was then and there requested to pay the said sum of money in the said bill mentioned, but the said Henry did not then or there pay the said sum of money in the said bill mentioned, or any part thereof, but wholly neglected and refused so to do, (22) neither did he pay the said second or third of exchange in the said bill mentioned, or either of them; nor (23) did the said persons so trading and using

commerce in copartnership together, under the name, stile, and firm of Gaunt and Co. pay the said sum of money in the said bill mentioned, or any part thereof, or the said second or third of exchange. And thereupon the said John afterwards, to wit, on the day and year last aforesaid, at Venice aforesaid, to wit, at London aforesaid, in the parish and ward aforesaid, according to the usage and custom of merchants, caused the said bill to be protested (24) for non-payment, of all which premises the said Thomas and Stephen afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, had (25) notice. And by reason thereof, and by force of the usage and custom of merchants, became liable to pay to (26) the said John the said sum of money in the said bill mentioned, or the value thereof, when (27) they the said Thomas and Stephen should be thereunto afterwards requested. And (28) being so liable, they the said Thomas and Stephen, in consideration thereof afterwards, to wit, on the day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, undertook, and to the said John then and there faithfully promised, to pay to him the said sum of money in the said bill mentioned, or the value thereof, when (29) they

they the said Thomas and Stephen should be thereunto afterwards requested. And (29) the said John avers that the said 700 ducats in the said bill mentioned, on the day and year last aforesaid, were, and from thenceforth hitherto have been, and still are of great value, to wit, of the value of £.

of lawful money of Great Britain, that is to say, at London aforesaid, in the parish and ward aforesaid. Yet the said Thomas and Stephen (although often requested) have not nor hath either of them paid to the said John the said sum of money in the said bill mentioned, or any part thereof, or the value thereof or of any part thereof, but hath wholly neglected and refused, and still neglects and refuses so to do: Wherefore the said John says he is injured, and hath sustained damage to the value of £. and therefore he brings suit, &c.

1. "On," &c. Upon a bill or note importing to be payable within a limited time after the date, and dated on a particular day, this (a) must be that day; on a bill or note importing to be payable within a limited time after the date, and not dated, the day (b) it issued if it can be ascertained, otherwise (c) *the first* day the plaintiff knew and can prove that it

(a) Semb. Str. 22.

(b) Vide ante, p. 35.

(c) Vide Beawes, f. 190. 1st Ed. 439.

existed ; on other bills or notes, exactness as to the day is immaterial.

2. "At," &c. On a bill dated at any place out of England or Wales, this must be the place at which it bears date, but where the drawing of the bill must be proved upon a trial, some place in England or Wales should be subjoined under a *videlicet*, thus, "At Venice in Italy ;" "To wit, at London," &c.

Where it appears upon the face of the count itself that the drawing ought to be proved (which is never the case except in an action against the drawer) the want of subjoining such place may be taken advantage of by (a) special demurrer to the count ; and by objecting to an admission of the proof where it appears for the first time at the trial, which happens in an action upon an acceptance made without sight of the bill.

A bill dated at any place in England or Wales, and payable abroad at usance, should be stated to have been made at the place where it bears date : other bills and notes, though they may bear date at a particular place, may be alleged to have been made any where in England or Wales.

A bill or note made by a servant may be stated to have been made by the master ; but the subscription (if stated) should be alleged to have been made by the servant for and on the account and by the direction of his master.

(a) Vide 16 and 17 Car. 2. c. 8. s. 1. 4 Ann. c. 16. s. 1.

3. "According," &c. 'Tis (*a*) not requisite to set out any part of the custom: and even a reference to it is (*b*) unnecessary.

In actions upon notes, instead of referring to the custom of merchants, the count refers to the statute.

4. "Their," &c. A signature, when essential, is implied by the preceding word "*made*;" this allegation therefore is not strictly (*c*) necessary.

5. "Bearing," &c. This allegation (*d*) also may be dispensed with: for it shall be intended, when the date is material, that a bill or note was dated when drawn.

6. "Directed," &c. In an action against the acceptor of a bill directed to him, or in his absence to I. S. the (*e*) conditional direction to I. S. need not be stated.

7. "Thereby," &c. A bill or note may (*f*) be stated according to its legal operation.

Thus a joint *or* several note, or a note importing in the body of it to be made by several persons, but signed by one only, may (*g*) be stated as a several note.

(*a*) R. *Soper v. Dible*, Ld. Raym. 175.

(*b*) R. *Ereskine v. Murray*, Ld. Raym. 1542. Vide Ld. Raym. 88. Carth. 83. 269. 270. Lutw. 279.

(*c*) R. On demurrer, *Elliott v. Cooper*, Ld. Raym. 1376. Str. 609. *Smith v. Jarves*, Ld. Raym. 1484. And on error after judgment by default, *Ereskine v. Murray*, Ld. Raym. 1542.

(*d*) R. *De la Courtier v. Bellamy*, 2 Show. 422.

(*e*) R. *Anon.* 12 Mod. 447.

(*f*) D. *Burr.* 325.

(*g*) R. *Roberts v. Peake*, Burr. 323.

Nay, where the plaintiff in an action against one of two makers of a joint *or* several note, stated that the defendant and another made their certain note, &c. and thereby *jointly or severally promised* to pay, the Court held it (a) well after judgment by default, notwithstanding, as the truth of either member verifies a disjunctive proposition, the note might have been joint.

And in an (b) action against one of several makers of a joint note, if it be stated as a several one, the objection can only be taken by plea in abatement.

A bill or note importing to be payable to a fictitious person may be stated to be payable to the person in whose favour the indorsement is made (c).

The payee of a bill or note payable "to his order," may state it to have been made payable *to himself*.

8. "Second," &c. In an action upon a bill consisting of several parts, if the plaintiff has each part, it may be doubted whether he need take notice of this condition, because all the parts collectively make an unconditional bill; and where he has not each part, it should seem more correct to state that the drawer *made his certain bill of exchange*

(a) Rees v. Abbott, Cowp. 832. R. cont. on demurrer, Butler v. Maliffy, Str. 76. After verdict, Ovington v. Neale, Ld. Raym. 1544. Str. 819.

(b) D. Cowp. 832. and vide Burr. 2614.

(c) Vide ante, 11.

in writing in three parts, his proper hand being subscribed to each of the said parts, bearing date, &c. and directed, &c. and by one of the said parts requested, &c. but the form I have adopted is the usual one.

9. "Or order," &c. In an action by the transferee of a bill or note, it is necessary to shew that the bill or note authorizes a transfer; in an action by the payee, (*a*) not.

10. "Delivered," &c. Delivery to the payee being essential to the validity of a bill or note, must be stated,

11. "Which," &c. Except in actions against acceptors, or on bills payable within a limited time after sight, the acceptance need not be stated.

12. "On," &c. Where the time of payment depends on the presentment, this should be the very day of the presentment; in other cases, exactness as to the day is not requisite.

If however the plaintiff allege in terms that the acceptance was made before the time limited by a bill for its payment, he will (*b*) be precluded from giving in evidence an acceptance afterwards.

13. "On," &c. Exactness here as to the day is not material: but the plaintiff may (*c*) preclude himself by stating it to have been made before the time limited for payment from proving a subsequent indorsement.

(*a*) R. Moore v. Paine, Ann. 288.

(*b*) D. Ld. Raym. 365. 12 Mod. 212.

(*c*) Vide Ld. Raym. 365. 12 Mod. 212.

14. "The contents." On an indorsement for less than the full sum mentioned in the bill or note, the plaintiff must (*a*) shew that the residue was paid.

15. "Or his order." These (*b*) words are unnecessary.

16. "Delivered," &c. Delivery to an indorsee is as essential as delivery to a payee; and therefore must equally be stated.

A full and blank indorsement are stated in the same manner.

17. "And the said Peter," &c. Every indorsement essential to a transfer must be stated: unnecessary ones may (*c*) be omitted.

The indorsement of the payee upon a bill or note payable to order, and of the indorsee upon a full indorsement is, as (*d*) before observed, essential to a transfer: every other unnecessary.

Where the plaintiff would omit an indorsement, he should represent that which precedes it to have been made in favour of the indorsee upon that which follows.

Thus if a bill payable to Allen's order be indorsed by him in blank, and delivered to Bradley, and indorsed by Bradley to Carter, if Carter would

(*a*) Vide *Hawkins v. Gardner*, Salk. 65. 12 Mod. 213. Carth. 466. Ld. Raym. 360.

(*b*) Vide ante, 14.

(*c*) Vide *Peacock v. Rhodes*, Dougl. 611.

(*d*) Vide ante, 15.

omit stating Bradley's indorsement, he should state that Allen indorsed it immediately to him.

18. "Of which," &c. This allegation is unnecessary.

19. "That an usance," &c. A neglect to shew the duration of an usance is (*a*) fatal upon demurrer, but upon demurrer only (*b*).

20. "And that," &c. In an action against the maker of a note or the acceptor of a bill (except (*c*) on an acceptance at the house of a stranger) the presentment is never stated.

In an action against the drawer of a bill, or the indorser of a bill or note, it is essential to state either that (*d*) the bill or note was presented, or that (*e*) the drawee or maker could not be found.

In the latter case it is (*f*) sufficient to aver generally that he was not found, without stating that any inquiry was made after him.

On an allegation that the bill or note was presented, and acceptance or payment refused, the

(*a*) R. Buckley v. Campbell, Salk. 131. Sed Q. where there is an express averment that the bill was presented on the day it became payable?

(*b*) R. Smart v. Dean, 3 Keb. 645.

(*c*) Vide ante, 29.

(*d*) R. On demurrer, Mercer v. Southwell, 2 Show. 180. On error after judgment by default, Rushton v. Aspinall, Dougl. 654.

(*e*) Vide ante, 30.

(*f*) R. Starke v. Cheeseman, Carth. 510.

plaintiff cannot (a) give in evidence that the drawee or maker could not be found.

In an action against the acceptor of a bill or maker of a note payable on demand, a (b) presentment need not be stated.

21. "On," &c. Unless there is an express averment that the presentment was made on the day when the bill or note became payable, this (c) must be that very day: where there is such averment, exactness as to the day is immaterial.

22. "Neither," &c. Where the plaintiff states that the drawer made *a certain bill of exchange in three parts, and by one of those parts requested the drawee (neither of the others being paid) to pay that; that that part was presented, and the drawee refused to accept or pay it*, this allegation is essential: where he states that the drawer *made his certain bill of exchange, and thereby requested him (second and third of exchange not being paid) to pay, &c. and that the said bill was presented, which the drawee refused to accept or pay, (d) not*.

23. "Nor," &c. This (e) allegation is unnecessary.

(a) R. Leeson v. Pigott, Sittings after Trinity, 1788.

(b) R. Rumball v. Ball, 10 Mod. 38.

(c) R. On error after judgment by default, Rushton v. Aspinall, Dougl. 654.

(d) R. After verdict, East v. Effington, Ld. Raym. 810. Salk. 130. After judgment by default, Starke v. Cheefeman, Carth. 509. And on demurrer to the replication, Wegerloffe v. Keene, Str. 214.

(e) Vide Post, p. 64. n. c.

24. "Protested," &c. The protest (*a*) need not be stated in an action on an inland bill: in an action on a foreign one the plaintiff (*b*) must either state it or (*c*) shew that it was not necessary; but the omission can (*d*) only be taken advantage of by a special demurrer.

In stating the protest the plaintiff may allege either "that (*e*) he protested the bill," or "that (*e*) he caused it to be protested."

25. "Notice." In an action for nonacceptance it is essentially necessary either to state that the defendant had (*f*) notice, or shew that he was not intitled thereto; but in an action for nonpayment against a party *prima facie* intitled to notice, it may be doubted whether the subsequent assumpsit may not be considered as sufficiently disproving his right to such notice even on a special demurrer.

26. "To the said John." In an action upon a bill or note stated upon the count to be payable *to the order of the plaintiff*, it is (*g*) usual, though (*b*) perhaps unnecessary, to insert here an allegation

(*a*) R. Brough v. Perkins, Ld. Raym. 992. 6 Mod. 80. Salk. 131. 3 Salk. 69.

(*b*) Adm. Salomons v. Staveley, B. R. M. 24 G. 3.

(*c*) Vide Rogers v. Stephens, 2 Term Rep. 713.

(*d*) R. Salomons v. Staveley, Dougl. 659. 2d Ed. n. 144.

(*e*) R. Sarsfield v. Witherley, 1 Show. 125.

(*f*) Vide Rushton v. Aspinall, Dougl. 654.

(*g*) Vide Fisher v. Pomfret, Carth. 403.

(*b*) Frederick v. Cotton, 2 Show. 8.

that the plaintiff made no order: but the better way upon a bill or note made so payable is to state according to the legal operation that it was made payable *to the plaintiff*, and then this allegation would be impertinent.

27. "When," &c. In an action against the acceptor of a bill or maker of a note not payable immediately upon presentment, instead of alleging that the defendant became liable, and promised to pay *when he should be thereunto afterwards requested*, he is stated to have become liable, and promised to pay *according to the tenor and effect of the bill and acceptance* in the one case, and of the *note* in the other.

28. "And," &c. This clause is unnecessary in an action against either the (a) acceptor of a bill or the maker of a note; and it may be doubted whether (b) it is essential in any other.

29. "And the said," &c. This averment is not, I apprehend, ever necessary: the want (c) of it is certainly cured by a verdict.

(a) Vide Str. 224.

(b) Vide Carth. 509. Salk. 128.

(c) Vide Symonds v. Parmenter, 1 Will. 185. 4 Bro. Parl. Ca. 604.

Bills of Exchange *and* Promissory Notes.

C A P. VI.

Of the Evidence necessary to intitle the Plaintiff to recover upon a Bill or Note, and the Defence which may be set up against him.

TO recover in respect of a bill or note on any count whatever, the plaintiff must prove such of those facts which he ought to state upon a special count as are not admitted; and upon a special count, such of the facts which are not admitted as appear upon the face of that count necessary.

An acceptance admits and precludes the acceptor from disputing the ability of the drawer to make the bill, and if made after sight of the bill, his (a) signature: an indorsement, the ability and (b) signature of every antecedent party.

But an acceptance, though made after sight of

(a) D. 1 Term Rep. 655. And see *Wilkinson v. Lutwidge*, Str. 648. *Jenys v. Fowler*, Str. 946. *Price v. Neale*, Burr. 1354. Blackst. 390.

(b) R. *Lambert v. Pack*, Salk. 127. Ld. Raym. 444. *Williams v. Seagrave*, 2 Barnard. B. R. 82. D. Str. 442.

an indorsement, does not admit the ability of
(a) signature of the indorser.

In an action therefore against the acceptor of a bill or maker of a note, the plaintiff must prove the defendant's signature, and the necessary indorsements; and in the former case, if the acceptance was made without sight of the bill, the signature of the drawer: in an action against the drawer of a bill, or the indorser of a bill or note, the defendant's signature, the necessary indorsements between him and the plaintiff, the presentment, the nonacceptance or nonpayment, and either the notice with (in the case of a foreign bill at least) the protest, or an excuse for not giving the one and procuring the other.

After a transfer by delivery by a person not intitled to make such transfer, any subsequent holder must (b) prove that either he or some intermediate person between him and such transferer took the bill or note *bonâ fide*, and gave a valuable consideration for it.

It is laid down in (c) some cases, that in an action against the indorser of a bill, the plaintiff must prove an application to the drawer for pay-

(a) *R. Smith v. Chester*, 1 Term Rep. 654. *Semb. Carvick v. Vickery*, Dougl. 630. 2d Ed. n. 134. *Sed vide Hankey v. Wilson*, Say. 223.

(b) *Semb. Peacock v. Rhodes*, Dougl. 611. *Grant v. Vaughan*, Burr. 1523. *Miller v. Race*, Burr. 458.

(c) *Vide Burr. 671.*

ment ; but that he need (a) not is now very fully settled.

A confession of his signature is sufficient evidence (b) against the party making it, but (c) not against any other party.

In an action against the drawer of a lost bill, Holt, C. J. (d) held proof that the defendant owned he had made the bill, sufficient.

So in an action against an indorser, proof that the defendant had the bill in his possession, that after issue joined he had declared that he came to town to hasten the trial of a cause brought against him on an indorsement he had made upon a bill, and that he carried the cause down by proviso, was (e) held sufficient.

But in an action by the indorsee of a bill against the drawer, proof that one of the indorsors had confessed his signature was (f) held insufficient.

The signature of a partner or servant, importing to have been made on the partnership or master's

(a) R. Bromley v. Frazier, Str. 441. Lawrence v. Jacob, Str. 515. Lake v. Hayes, 1 Atk. 282. Heylin v. Adamson, Burr. 669. And see Harry v. Petit, Salk. 134.

(b) R. Hart v. King, 12 Mod. 309. Cooper v. Le Blanc, Str. 1051. Dale v. Lubbock, 1 Barnard. B. R. 199.

(c) R. Hemmings v. Robinson, 1 Barnes 317.

(d) Hart v. King, 12 Mod. 309.

(e) Dale v. Lubbock, 1 Barnard. B. R. 199.

(f) Hemmings v. Robinson, 1 Barnes 317.

account, is to be considered as the signature of the (a) partnership or master.

On a signature by a servant, the servant's authority must be proved.

An authority by parol is (b) sufficient.

Subsequent assent is (c) evidence of precedent authority.

Usual employ is evidence of a general authority; and a general authority is (d) supposed to continue until its determination is notorious.

Therefore after the discharge of a servant usually employed, a (e) man will be bound by his signature until his discharge is generally known.

Where notice is to be sent by the post, proof of putting it into the post is (f) sufficient.

Production of the instrument is (g) sufficient evidence of a protest.

On a judgment by default, no (h) evidence need be produced.

The

(a) Vide *Pinkney v. Hall*, *Ld. Raym.* 175. *Smith v. Jarves*, *Ld. Raym.* 1484. *Carvick v. Vickery*, *Dougl.* 630. 2d Ed. n. 134.

(b) *D.* 12 *Mod.* 564.

(c) *Semb. Comb.* 450.

(d) *D.* — *v. Harrison*, 12 *Mod.* 346. *Malynes*, *B.* 3. c. 5. f. 6. p. 264. *Semb.* 10. *Mod.* 110.

(e) Vide *Beawes*, f. 231. p. 445. *Molloy*, *B.* 2. c. 10. f. 27.

(f) *Semb. cont.* 1. *Barnard*, *B. R.* 199.

(g) *R. Anon.* 12 *Mod.* 345.

(h) *R. Bevis v. Lindfell*, *Str.* 1149. *Mills v. Lyne*, *B. R.* H. 26

The Court (*a*) will therefore upon such judgment, even in *assumpsit* on a bill or note, refer it to an officer to ascertain the sum due for principal, interest, and charges, and give the plaintiff final judgment without a writ of inquiry.

The only species of defence to an action in respect of a bill or note necessary to be mentioned, is that which is founded upon the want of a consideration for giving or transferring it, or an illegality in the consideration upon which it is given or transferred.

The (*b*) debt of a third person, or a debt barred by (*c*) the statute of limitations, by a discharge under an insolvent or fugitive act, by a (*d*) bankruptcy and certificate, or by a composition, is a good consideration.

But the consideration of (*e*) signing a bankrupt's certificate, or (*f*) joining in the acceptance of a composition, is illegal.

H. 26 G. 3. Vide Appendix, N^o 7. D. 3 Will. 155. R. cont. *Billers v. Bowles*, 2 Barnes 190. *Ellis v. Wall*, 2 Barnes 192.

(*a*) R. *Anon*, B. R. H. 26 G. 3. See also *Anon*. Comb. 243.

(*b*) R. *Poplewell v. Wilson*, Str. 264.

(*c*) Vide *Hyleing v. Hastings*, Ld. Raym. 389. *Dean v. Crane*, 6 Mod. 309. Burr. 2630. Blackst. 703. Cowp. 290.

(*d*) R. *Trueman v. Fenton*, Cowp. 544. *Birch v. Sharland*, 1 Term Rep. 715. Cowp. 290.

(*e*) Vide 5 G. 2. c. 30. s. 11. *Smith v. Bromley*, Dougl. 670.

(*f*) R. *Cockshott v. Burnett*, 2 Term Rep. 763. And see *Spurrett v. Spiller*, 1 Atk. 105.

Past (*a*) seduction is a good consideration; future (*b*) prostitution an illegal one.

Dropping (*c*) a criminal prosecution, or suppressing evidence thereon, a (*d*) recommendation to an office in the king's household though of a private nature, and not within the statute of the 5th and 6th Ed. 3. a (*e*) smuggling an (*f*) usurious or a (*g*) stockjobbing contract, is an illegal consideration.

So money lost by gaming, (except (*b*) in any part of any royal palace in which the king is then actually resident, the freehold and inheritance of which part is in the crown, and which is not in lease) or betting on the sides of persons so gaming, money knowingly lent for such gaming or betting, or money lent at the time and place of such play to any person either then gaming or betting, or who shall, during the play, play or bet, is (*i*) an illegal consideration.

(*a*) *R. Annandale v. Harris*, 2 P. Wms. 432. *Cray v. Rooke*, Forreft. 153. *Turner v. Vaughan*, 2 Willf. 339.

(*b*) *R. Walker v. Perkins*, Burr. 1568.

(*c*) Vide 3 P. Williams, 279. *Collins v. Blantern*, 2 Willf. 349.

(*d*) *R. Harrington v. Du Chatel*, Brown's Ch. Caf. 114.

(*e*) *R. Guichard v. Roberts*, Blackst. 445.

(*f*) 12 Ann. ft. 2. c. 16.

(*g*) 17 G. 2. c. 8.

(*h*) 9 Ann. c. 14. f. 9.

(*i*) 9 Ann. c. 14. f. 1.

Playing (*a*) at cricket, or (*b*) running a race against time, is gaming; insuring (*c*) in the lottery, not.

No person can insist upon the mere want of a consideration who has himself received one; nor can either the want of it or its illegality be taken advantage of but by those persons who would otherwise have been liable upon the bill or note to the person to whom it was given without or on the bad consideration; nor (*d*) by them against any subsequent transferee, if either he or any intermediate party between him and the person to whom it was so given took it *bonâ fide*, and gave a valuable consideration for it, except (*e*) in those cases in which the legislature has declared that an insufficiency in the consideration shall make the bill or note absolutely void.

Those cases are, where the consideration is either (*f*) wholly or in part (*g*) signing a bankrupt's certificate, money (*b*) lost by gaming as aforesaid, or betting on the sides of persons so gaming, money

(*a*) R. Jeffreys v. Walter, 1 Will. 220.

(*b*) R. Lynall v. Longbotham, 2 Will. 36.

(*c*) Vide Lewis v. Piercy, H. Blackst. 29.

(*d*) R. Morrison v. Lee, B. R. H. 26 G. 3. Vide Appendix, N^o 9. Anon. Com. 43. D. 1 Term Rep. 40. 2 Term Rep. 71. Vide 2 Atk. 182. Bull. Ni. Pr. Ed. 1775. 274.

(*e*) Vide Bowyer v. Bampton, Str. 1155. Lowe v. Waller, Dougl. 708.

(*f*) Vide Robinson v. Bland, Burr. 1077.

(*g*) 5 G. 2. c. 30. s. 11.

(*b*) 9 Ann. c. 14. s. 1.

(a) knowingly lent for such gaming or betting, money lent at the time and place of such play to any person either then gaming or betting, or who shall, during the play, play or bet, or (b) money lent on an usurious contract.

By suffering a judgment by default, the (c) defendant loses the opportunity of objecting to the sufficiency of the consideration.

(a) Though a bill or note given or transferred for money knowingly lent for gaming, or betting on the sides of persons gaming, or for money lent at the time and place of play to any person either then gaming or who shall, during the play, play or bet is void; the lender may recover back such money in an action for money lent, and perhaps any subsequent transferee of the bill or note might recover it in an action for money had and received.

(b) 12 Ann. st. 2. c. 16.

(c) R. Anon. B. R. H. 26 G. 3.

A P P E N D I X.

N^o 1. Peckham v. Wood, B. R. E.
18 G. 3.

IN trover by the assignees of a bankrupt, the plaintiffs to prove the petitioning creditor's debt produced a note of five years standing, but gave no evidence of the consideration upon which it was given. Serjeant Sayer, who tried the cause, thought such evidence essential and nonsuited the plaintiff: but the Court was of a different opinion and granted a new trial.

N^o 2. Kingston v. Long, B. R. M.
25 G. 3.

In an action by the plaintiff as indorsee against the defendant as acceptor of a bill upon an order importing to be payable *provided the terms men-*

tioned in certain letters written by the drawer were complied with, the Court held clearly the plaintiff could not recover, though the acceptance admitted a compliance with those terms; for the order was no bill until after such compliance, and if it was not *a bill when drawn*, it could never afterwards become one.

N° 3. White v. Ledwick, B. R. H.
25 G. 3.

On demurrer to a declaration upon a bill of exchange, because it did not on the face of the declaration import to have been given for value received, the Court held it a settled point, that it was not necessary that a bill should import to have been given for value received, and gave judgment for the plaintiff.

N° 4. J'anfon v. Thomas, B. R. T.
24 G. 3.

In an action upon an inland bill payable *at sight*, the question was, whether it was included under the exception in the stamp act of the 23d G. 3. c. 49. s. 4. in favour of bills payable *on demand*: and the Court held that it was not; and Buller J. mentioned a case before Willes C. J. in London, in which

which a jury of merchants was of opinion that the usual days of grace were to be allowed on bills payable at sight.

N^o 5. Smith v. De la Fontaine, B. R. T.
25 G. 3.

In an action against the acceptor of a bill on an acceptance to pay at his banker's, the plaintiff could not prove a presentment at the banker's; notwithstanding which the jury found for him: the Court held the proof unnecessary, and refused to grant a new trial. *Bishop v. Chitty, Str. 1195, was cited.*

N^o 6. Appleton v. Sweetapple, B. R. M.
23 G. 3.

In this case the question was, whether a bill payable on demand in London had been presented in proper time: it was given to the plaintiff in London about one o'clock in the afternoon, and he delayed presenting it until the next morning. Lord Mansfield left the point to the jury, who found for the defendant: but the Court granted a new trial because the question was a matter of law, upon which the judge ought to have decided:
upon

upon (a) the new trial the jury again found for the defendant, but I believe against the judge's direction.

N^o 7. Mills v. Lyne, B. R. H.

26 Geo. 3.

On a writ of enquiry in an action upon a note, the sheriff directed the jury to give nominal damages only; because the plaintiff could not prove the note. Lawrence insisted that plaintiff was bound to produce the note (because a receipt of part might have been indorsed thereon) and prove the defendant's signature; but per Buller J. if you had paid part you might have pleaded it, but you have let judgment go for the whole; and the Court set aside the inquisition.

N^o 8. Morris v. Lee, B. R. H.

26 G. 3.

In an action by the indorsee against the maker of a note thirteen years old, the defendant obtained a rule *nisi* to set aside a judgment obtained by default on an affidavit by a third person, that he believed the defendant was swindled out of the note. An affidavit was made on the other side, that the plaintiff took the note *bonâ fide*, and gave a valuable consideration for it: and the Court held, that

however improperly it might have been obtained, a third person who took it fairly and gave a consideration for it was intitled to recover, and discharged the rule.



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